[Release No. 34–35340; File No. SR–NASD–94–77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure

February 8, 1995.

On December 20, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC '' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 3 of the Code of Arbitration Procedure (''Code'')[3] to expressly provide that the Director of Arbitration (''Director'') may delegate decisionmaking authority as appropriate.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35168, December 29, 1994) and by publication in the **Federal Register** (60 FR 1822, January 5, 1995). No comment letters were received. This order approves the proposed rule change.

The current provisions of Section 3 of the Code provide for the NASD Board of Governors to appoint a Director to perform all administrative duties and functions in connection with matters submitted for arbitration pursuant to the Code. The Director has found it necessary to delegate certain duties and functions of the Director to other senior management employees of the NASD's Arbitration Department (''Department''), especially as a result of the significant growth in the Department's staff and workload. The NASD believes that the authority of the Director to manage the functions of the NASD's Arbitration Department inherently includes the power to delegate duties and functions as appropriate. Nevertheless, the rule change amends Section 3 of the Code to expressly permit the Director to delegate duties and functions of the Director as appropriate.

The rule change provides that the Director may delegate duties and functions of the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is permanently or indefinitely disabled from the performance of the duties and functions of the Director, the rule change permits the NASD President or an NASD Executive Vice President to appoint an interim Director to perform the functions and responsibilities of the Director.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] because the rule change will protect investors and the public interest by avoiding uncertainty and possible litigation about the authority of a Department staff member to act under the Code by permitting the Director to delegate duties and functions vested by the Code with the Director. The Commission further believes that by permitting certain other NASD officers to appoint an interim Director if circumstances render the Director unable to discharge the duties vested with the Director, the proposal will help protect investors and is in the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that file No. SR–NASD–94–77 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3570 Filed 2–13–95; 8:45 am]

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[1] 15 U.S.C. Section 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, Code of Arbitration Procedure, Part I, Sec. 3 (CCH) ¶ 3703.

[Release No. 34–35339; File No. SR–NASD 94–71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of ''Do Not Reduce'' and ''Do Not Increase'' Instructions With Respect to the Repricing of Open Orders

February 7, 1995.

On December 7, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change amends Article III, Section 46 of the Rules of Fair Practice,[3] which governs adjustment of open orders, relating to the applicability of this section to orders marked ''do not reduce'' (''DNR'') and ''do not increase (''DNI''). The provisions of Section 46 deal with the adjustment of open orders in the event of a payment or distribution. As amended, the rule will neither apply to orders marked DNR where the dividend is payable in cash, nor to orders marked DNI where the dividend is payable in stock, provided that the price of such DNI orders shall be adjusted as required by the rule.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member to adjust the price and size of an open order in proportion to the dividend or other distribution on the day the security is quoted ''ex'',[6] before the member may permit the order to be executed. The amendment has been proposed in response to an inconsistency in the definition of the terms DNR and DNI between the NASD's Section 46 and New York Stock Exchange (''NYSE'') Rule 118,[7] on which Section 46 was patterned. Because Section 46 was intended to operate in the same manner as NYSE Rule 118, the NASD filed the proposed rule change to amend the definitions of DNR and DNI to conform to the definitions in Rule 118.

Under NYSE Rule 118, a DNR instruction applies only with respect to cash dividends. An order with a DNR instruction will not be reduced in price in the event of a cash dividend. Such an order will, however, be reduced in price and increased in size in the event of a stock dividend or split. In addition, under NYSE Rule 118, a DNI instruction applies only with respect to order size adjustments in the event of stock dividends. While an order with a DNI instruction will not increased in size, it will be reduced in price in the event of a stock dividend or split. An order with a DNI instruction is inapplicable in the event of a cash distribution because the

[4] 15 U.S. C. Section 70*o*–3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, of Fair Practice, Article III, Section 46, (CCH) ¶ 2200F.

[4] Securities Exchange Act Release No. 35169 (December 28, 1994).

[5] 60 FR 2169 (January 6, 1995).

[6] The ''ex-date'' represents the day on which the underlying security is traded without a specific dividend or distribution. NASD Manual, Uniform Practice Code, Section 3(e), (CCH) ¶ 3503.

[7] NYSE Guide, Handling of Orders and Reports, Rule 118, (CCH) ¶ 2118.

number of shares is not affected by a cash distribution and, therefore, no order size adjustment is necessary.

Currently, under Section 46, a DNR instruction applies to both cash and stock distributions. For example, the price of an order marked DNR would not be adjusted under the current definition in Section 46 even in the event of a 2 for 1 or similar stock dividend. Such a dividend would halve the quotes for the security, but the order would remain at the original price, far out of line with the adjusted market for that security. Similarly, all orders marked DNI would not be subject to the current adjustment provisions of Section 46. While an order marked DNI would not be increased in size in the event of stock dividend, it also would not be reduced in price pursuant to the provisions of Section 46.

For customers who understand the operation of Section 46 to be the same as NYSE Rule 118, leaving the current definitions in place could result in unexpected executions of certain open orders. To address this concern, the NASD has proposed to amend the applicability of Section 46 to orders marked DNR and DNI. Pursuant to the amendment, the provisions of the rule will not apply to orders marked DNI where the distribution is payable in cash, nor to orders marked DNI where the distribution is payable in stock, provide, however, that the price of such DNI orders will be adjusted as required by the rule.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change acts to remedy an unintentional inconsistency between Section 46 and NYSE Rule 118. The rule change also protects against the unexpected and unintended execution of open orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–71 be, and hereby is, approved.

[8] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3567 Filed 1–13–95; 8:45 am]

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[Release No. 34–35343; File No. SR–NYSE–94–46]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Specialist Combination Review Policy to Require Proponents of Certain Specialist Unit Combinations to Address Issues Related to the Capitalization, Risk Management, and Operational Efficiency of Large Sized Specialized Units

February 8, 1995.

I. Introduction

On December 9, 1994 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt amendments to the NYSE's Specialist Combination Review Policy (''Policy''). Specifically, the proposal would require proponents of certain specialist unit combinations to address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35171 (December 28, 1994), 60 FR 1818 (January 5, 1995). No comments were received on the proposal.

II. Background

The Exchange's Policy was first approved by the Commission on a six-month pilot basis in 1987.[3] The Commission subsequently granted permanent approval following an interim extension.[4]

The Policy is a three-tier system of review, primarily conducted by the Quality of Markets Committee (''QOMC''), to review proposed specialist combinations that raise concentration-related issues. The Policy calls for review of a potential combination where the combination will result in a specialist unit accounting for more than 5% of any one of four specified concentration measures: Allocation for all listed common stocks; allocation for the 250 most active listed common stocks; total share volume of stock trading on the Exchange; and total dollar value of stock trading on the Exchange. Once a review is triggered under the Policy, the primary factors taken into consideration by the QOMC depend upon whether the proposed combination warrants a Tier I review (exceeding a concentration measure by more than 5%), Tier II review (exceeding a concentration measure by more than 10%, up to and including 15%), or a Tier III review (exceeding a concentration measure by 15%). The level of the burden of proof placed upon the proposed combining units also may vary depending on the Tier of review.

III. Description

The proposal will add several requirements that address issues related to the capitalization, risk management, and operational efficiency of large-sized specialist units.[5] The proposal requires proponents of a combination that would exceed 10% of a concentration measure to:

- Submit an acceptable risk management plan with respect to any line of business in which they engage;
- Submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations;
- Agree to maintain a minimum of 1.5 times (2 times, in the case of a 15% combination) the total capital requirement specified in Rule 104.20[6] with respect to the combined entity's stocks;

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[4] See Securities Exchange Act Release Nos. 25481 (March 17, 1988), 53 FR 9554 (March 23, 1988) (interim extension); 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (permanent approval).

[5] Once the proponents agree that they will abide by the requirements listed below, the Exchange will verify the ability of the units to make such commitments by reviewing their individual capitalization information. If such a review shows that the units do not have the requisite capacity, then the combination will not be approved. Once the combination has been approved, the Exchange will monitor the combined unit to ensure that it continues to meet the additional requirements. In the event the combined unit fails to meet the additional requirements, the Exchange will address the issue as it would any other capital requirements violation. In such circumstances, the Exchange, through its Rule 476, has several courses of action available to it including stock reallocation. Conversations between Don Seimer, NYSE, and Amy Bilbija, Attorney, SEC, on January 27, 1995 and February 6, 1995.

[6] Pursuant to NYSE Rule 104.20, a specialist unit at an active post is required to be able to assume a position of 150 trading units in each common

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